

Donald E. McInnis (SBN 59720)  
Ben-Thomas Hamilton (SBN 222601)  
HAMILTON & McINNIS, L.L.P.  
3110 Camino del Rio South, Suite 203  
San Diego, California 92108

Telephone: (619) 299-4877  
Facsimile: (619) 299-4787

Attorneys for JAMES A. FRY, DOBERMANRESQ.COM and DOBERMANRESQ INC.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JAMES A. FRY d/b/a FOX  
NETWORK SYSTEMS,

Plaintiff,

v.

AZTEC DOBERMAN PINSCHER  
CLUB OF SAN DIEGO,

Defendant.

AZTEC DOBERMAN PINSCHER  
CLUB OF SAN DIEGO

Counter-Claimant

v.

JAMES A. FRY an individual and d/b/a  
DOBERMANRESQ.COM; and  
DOBERMANRESQ INC., a California  
corporation,

Counter-Defendants.

Case No. 11-CV-1329 BTM (POR)

**NOTICE OF LODGMENT IN SUPPORT  
PLAINTIFF AND COUNTER-  
DEFENDANTS' REQUEST TO MODIFY  
THIS COURT'S SCHEDULING ORDER  
TO ALLOW PLAINTIFF AND COUNTER-  
DEFENDANTS TO FILE THEIR FIRST  
AMENDED COMPLAINT**

Date: August 23, 2012  
Time: 3:30 p.m.  
Judge: Hon. David H. Bartick

///

///

///

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Plaintiff and Counter-Defendants, JAMES A, FRY, DOBERMANRESQ.COM and DOBERMANRESQ, INC. hereby submit the following true and correct copies of documents in support their motion to request this Court to modify its scheduling order to allow PLAINTIFFS to file their first amended complaint.

Exhibit "A" PLAINTIFFS First Amended Complaint; and

Exhibit "B" DEFENDANT'S Settlement Package Provided to PLAINTIFFS on June 11, 2012.

/s/ Donald E. McInnis

Dated: July 10, 2012

By:

Donald E. McInnis, Attorneys for Plaintiff,  
and Counter-Defendant JAMES A. FRY, an  
individual, d/b/a FOX NETWORK  
SYSTEMS, DOBERMANRESQ.COM and  
DOBERMANRESQ INC.

K:\CLIENTS\Fry\Pleadings\motiontoamend\lodgement.wpd

EXHIBIT "A"

Donald E. McInnis (SBN 59720)  
Ben-Thomas Hamilton (SBN 222601)  
HAMILTON & McINNIS, L.L.P.  
3110 Camino del Rio South, Suite 203  
San Diego, California 92108

Telephone: (619) 299-4877  
Facsimile: (619) 299-4787

Attorneys for JAMES A. FRY, DOBERMANRESQ.COM and DOBERMANRESQ INC.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JAMES A. FRY d/b/a FOX  
NETWORK SYSTEMS,

Plaintiff,

v.

AZTEC DOBERMAN PINSCHER  
CLUB OF SAN DIEGO,

Defendant.

AZTEC DOBERMAN PINSCHER  
CLUB OF SAN DIEGO

Counter-Claimant

v.

JAMES A. FRY an individual and d/b/a  
DOBERMANRESQ.COM; and  
DOBERMANRESQ INC., a California  
corporation and DOES 1-50

Counter-Defendants.

Case No. 11-CV-1329 BTM (POR)

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

///

///

///

1 COMES NOW Plaintiff JAMES A. FRY d/b/a FOX NETWORK SYSTEMS,  
2 (hereinafter referred to as "PLAINTIFF"), and alleges against AZTEC DOBERMAN  
3 PINSCHER CLUB OF SAN DIEGO, a California non-profit corporation ("DEFENDANT") and  
4 DOES 1-50 alleges as follows:

5 **JURISDICTIONAL ALLEGATIONS**

6 1. PLAINTIFF is and at all times mentioned herein an individual residing in the  
7 County of San Diego, State of California. PLAINTIFF hereby demands a trial by jury.

8 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT is  
9 now, and at all times mentioned herein was, a non-profit corporation located and doing business  
10 in the City of San Diego, County of San Diego, State of California.

11 3. PLAINTIFF is ignorant of the true names and capacities, whether individual or  
12 otherwise, of Defendants sued as DOES 1 through 50, inclusive, and therefore sue these  
13 Defendants by such fictitious names. PLAINTIFF will amend this complaint to allege their true  
14 names and capacities when ascertained. PLAINTIFF is informed and believes, and thereon  
15 alleges, that each of the fictitiously named Defendants is responsible in some manner for the  
16 occurrences herein alleged, and that PLAINTIFF'S injuries as herein alleged were proximately  
17 caused by such Defendants.

18 4. PLAINTIFF is further informed and believes, and thereon alleges, that each of the  
19 Defendants is, and at all material times was, the agent, servant, or employee of each of the  
20 remaining Defendants, and was acting within the course and scope of said agency or employment  
21 with the approval, knowledge and/or consent of each of the remaining Defendants.

22 5. The jurisdiction of this District Court over Federal Question(s) herein is invoked  
23 pursuant to 28 U.S.C. §1331, *et seq.* and pursuant to Sections 101 *et seq.* and 201, *et seq.* of Title  
24 17 of the United States Code.

25 6. The District Court has pendent jurisdiction to adjudicate the State Law claims for  
26 relief pled in this first amended complaint.

27 ///

28 ///

1           7.     Venue is proper in this District Court because all parties are residents in and within  
2 this Judicial District, because the acts and omissions herein alleged either occurred in this  
3 Judicial District, or had a direct impact in and within this judicial district and is a copyright  
4 action filed in San Diego, California pursuant to Title 28 of the United States Code section  
5 1400(a)&(b).

6                                   **GENERAL ALLEGATIONS**

7           8.     DEFENDANT is licensed by the American Kennel Club and is a chapter member  
8 of the Doberman Pinscher Club of America. DEFENDANT'S primary mission "is to come to  
9 the aid of Dobermans in need." To accomplish this goal, DEFENDANT educates the public  
10 about the Doberman breed and runs its Doberman Rescue program.

11          9.     In or about 2002, PLAINTIFF joined DEFENDANT to help rescue Dobermans.  
12 When PLAINTIFF reviewed DEFENDANT'S rescue website, he determined the  
13 DEFENDANT'S website was grossly out of date.

14          10.    PLAINTIFF attempted to help DEFENDANT'S web designer, Doug Brown,  
15 modernize the website. However, Mr. Brown did not possess the knowledge to update  
16 DEFENDANT'S website on his own. Thus, Mr. Brown resigned from his position and turned  
17 over the operation of DEFENDANT'S website to PLAINTIFF.

18          11.    In or about 2003, PLAINTIFF officially became DEFENDANT'S web designer.  
19 PLAINTIFF completely overhauled the website. PLAINTIFF added videos, updated all the  
20 existing information, ensured the website's information was always current, and began posting  
21 stories and pictures of rescued Dobermans.

22          12.    In or about 2005, PLAINTIFF created DOBERMANRESQ.COM so he could  
23 rescue Dobermans on his own, without any influence from DEFENDANT. Thereafter,  
24 DOBERMANRESQ.COM helped find good homes for hundreds of Dobermans.

25          13.    In 2006, PLAINTIFF resigned as DEFENDANT'S webmaster and left the club.  
26 However, out of a shared love to rescue Dobermans, PLAINTIFF continued to run  
27 DOBERMANRESQ.COM.

28    ///

1           14. After leaving the club in 2006, PLAINTIFF reached an agreement with  
2 DEFENDANT'S chairperson, Angie Gilbert, regarding photographs and rescue stories related  
3 to DEFENDANT. Since PLAINTIFF had a superior website and time to maintain it,  
4 DEFENDANT and PLAINTIFF agreed that DEFENDANT would provide PLAINTIFF with  
5 information about rescued Dobermans. PLAINTIFF would transform the information into a  
6 thoughtful story, which he posted alongside a picture of the Doberman onto  
7 DOBERMANRESQ.COM. These stories helped increase internet traffic and made people aware  
8 of efforts to rescue Dobermans.

9           15. DEFENDANT also created a link to DOBERMANRESQ.COM on its site so  
10 people could view the rescued Dobermans. DEFENDANT referred people to  
11 DOBERMANRESQ.COM in its monthly newsletter. A true and correct copy of this link is  
12 attached hereto as Exhibit "A."

13           16. During this time, DEFENDANT'S board and club members were made aware of  
14 the fact that DEFENDANT'S rescued Dobermans and their stories were listed on  
15 DOBERMANRESQ.COM and of the agreement in place with PLAINTIFF. They had no  
16 objection.

17           17. PLAINTIFF also listed donations made to DEFENDANT on  
18 DOBERMANRESQ.COM. The donations could not be listed on DEFENDANT'S website  
19 because it did not have the capability to do so. Therefore, DEFENDANT allowed PLAINTIFF  
20 to list the contributions to ensure donors received proper recognition.

21           18. PLAINTIFF traveled around Southern California to obtain images for  
22 DOBERMANRESQ.COM. PLAINTIFF took photographs and videos of Dobermans in need  
23 of new homes. PLAINTIFF then posted the images on DOBERMANRESQ.COM and created  
24 a story about each Doberman.

25 ///

26 ///

27 ///

28 ///

1           17. DOBERMANRESQ.COM allowed website visitors to upload images of  
2 Dobermans directly onto the site. By uploading photographs, users entered into a licensing  
3 agreement granting PLAINTIFF non-exclusive rights to use the photographs (hereinafter  
4 referred to as the "License Agreement"). The terms of the License Agreement were visible to  
5 users before they completed the upload. A true and correct copy of the Licensing Agreement  
6 is attached hereto as Exhibit "B."

7           18. PLAINTIFF is informed and believes and thereon alleges that in 2008,  
8 DEFENDANT uploaded a great deal of images via DOBERMANRESQ.COM'S uploading  
9 page. Therefore, DEFENDANT entered into PLAINTIFF'S License Agreement allowing  
10 PLAINTIFF to use the images that were uploaded on DOBERMANRESQ.COM.

11           19. Sadly, in or about November 2010, PLAINTIFF and DEFENDANT had a "falling  
12 out." DEFENDANT elected a new board who accused PLAINTIFF of stealing images from  
13 DEFENDANT.

14           20. DEFENDANT'S new board did not recognize the agreement made between Ms.  
15 Gilbert and PLAINTIFF or the years of hard work PLAINTIFF had put into helping both  
16 websites serve the Doberman rescue community. Thus, PLAINTIFF cut all ties with  
17 DEFENDANT. However, DEFENDANT continued to use the images and stories created by  
18 PLAINTIFF without his consent or permission.

19           21. DEFENDANT has since issued several Takedown Notices under the Digital  
20 Millennium Copyright Act to PLAINTIFF, regarding the photographs and stories of almost one  
21 hundred Dobermans depicted on DOBERMANRESQ.COM that are affiliated with  
22 DEFENDANT. This is despite the fact that DEFENDANT entered into multiple valid licensing  
23 agreements which allowed PLAINTIFF to use the images that were the subject of multiple  
24 Takedown notices. True and correct copies of the "Takedown Notices" are attached hereto as  
25 Exhibit "C."

26           22. After complying with the Takedown Notices, PLAINTIFF began receiving  
27 telephone calls from donors who informed him they were discontinuing their donations to  
28 DOBERMANRESQ.COM due to the lack of images and stories.





1        30. Since 2010, DEFENDANT infringed PLAINTIFF'S copyright by (1) publishing  
 2 and placing the images and stories on its website despite the fact PLAINTIFF has a  
 3 copyrightable interest in these images and not requesting PLAINTIFF'S permission; (2)  
 4 preventing PLAINTIFF from using his copyrightable images through the fraudulent use of  
 5 Digital Millennium Copyright Takedown Notices; (3) by displaying PLAINTIFF'S images in  
 6 a way that harms PLAINTIFF and prevents PLAINTIFF from helping rescue Dobermans; (4)  
 7 and by refusing to pay any license fee to use PLAINTIFFS' images.

8        31. PLAINTIFF has notified DEFENDANT that it has infringed the copyright of  
 9 PLAINTIFF. DEFENDANT has continued to infringe the copyright.

10       32. Because of DEFENDANT'S infringement, PLAINTIFF has suffered and continues  
 11 to suffer general and special damages and has been required to hire legal counsel to prosecute  
 12 this action all to his detriment in an amount greater than \$25,000.00, the exact amount to be  
 13 determined at trial.

14       32. DEFENDANT has infringed and continues to infringe on PLAINTIFF'S  
 15 trademark, copyright and proprietary information, causing irreparable harm justifying injunctive  
 16 relief to restrain DEFENDANT from further harmful action.

17       33. The aforementioned acts of the defendant were willful, malicious, despicable and  
 18 fraudulent and entitle PLAINTIFF to punitive or exemplary damages, the amount to be  
 19 determined at trial.

## 20       **SECOND CAUSE OF ACTION**

### 21       **(Breach of Covenant of Good Faith and Fair Dealing)**

22       34. PLAINTIFF hereby realleges and incorporates herein by this reference Paragraphs  
 23 1 through 33, inclusive, as though fully set forth herein.

24       35. Each and every contract carries an implied promise by the parties of good faith and  
 25 fair dealing, to wit: that neither party will do anything to unfairly interfere with the right of any  
 26 other party to receive the benefits of the contracts.

27       ///

28       ///

1           36. In or about 2006, PLAINTIFF reached an agreement with DEFENDANT'S  
2 chairperson, Angie Gilbert, regarding photographs and rescue stories related to DEFENDANT.  
3 Since PLAINTIFF had a superior website and time to maintain it, DEFENDANT and  
4 PLAINTIFF agreed that DEFENDANT would provide PLAINTIFF with information about  
5 rescued Dobermans. PLAINTIFF would transform the information into a thoughtful story,  
6 which he posted alongside a picture of the Doberman onto DOBERMANRESQ.COM.

7           37. During this time, DEFENDANT'S board and club members were made aware of  
8 the fact that DEFENDANT'S rescued Dobermans and their stories were listed on  
9 DOBERMANRESQ.COM and of the agreement in place with PLAINTIFF. They had no  
10 objection.

11           38. During 2008, the parties entered into the License Agreement whereby  
12 DEFENDANT granted PLAINTIFF an exclusive license to display certain images of Dobermans  
13 on DOBERMANRESQ.COM This provision was a material term to the License Agreement. A  
14 true and correct copy of the License Agreement is attached hereto as Exhibit "B."

15           39. Since that time, DEFENDANT has refused to honor the terms of the License  
16 Agreement by filing a lawsuit against PLAINTIFF, alleging that PLAINTIFF does not have a  
17 right to use the images which were the subject of the Licensing Agreement. This, despite the fact  
18 that PLAINTIFF and DEFENDANT entered into a valid written License Agreement and a valid  
19 oral agreement to post the disputed images on DOBERMANRESQ.COM. DEFENDANT was  
20 aware of both these agreements at all relevant times.

21           40. PLAINTIFF has performed everything required of him under the written and oral  
22 License Agreements.

23           41. DEFENDANT'S refusal to honor the License Agreement has adversely affected  
24 PLAINTIFF in an amount in excess of \$25,000.00, the exact amount to be determined at the time  
25 of trial. Had PLAINTIFF known that DEFENDANT would not hold up its part of the Licensing  
26 Agreement, PLAINTIFF would not have entered into it in the first place.

27 ///

28 ///



1           48. On or about July 15, 2011, DEFENDANT sent PLAINTIFF a Digital Millennium  
2 Copyright Act ("DMCA") Takedown Notice regarding the images DEFENDANT entered into  
3 a License Agreement with PLAINTIFF as described above. A true and correct copy of the  
4 Takedown Notice is attached hereto as Exhibit "C."

5           49. On or about July 23, 2011, DEFENDANT sent PLAINTIFF another Digital  
6 DMCA Takedown Notice regarding the images DEFENDANT entered into a License  
7 Agreement with PLAINTIFF as described above. A true and correct copy of the Takedown  
8 Notice is attached hereto as Exhibit "C."

9           50. On or about September 9, 2011, DEFENDANT sent PLAINTIFF another Digital  
10 DMCA Takedown Notice regarding the images DEFENDANT entered into a License  
11 Agreement with PLAINTIFF as described above. A true and correct copy of the Takedown  
12 Notice is attached hereto as Exhibit "C."

13           51. Title 17 of the United States Code section 512(f) states that a party is guilty of a  
14 misrepresentation if a person:

15           knowingly materially misrepresents under this section:

16                   (1) that material or activity is infringing, or

17                   (2) that material or activity was removed or disabled by mistake or  
18                   misidentification.

19           53. DEFENDANT knowingly misrepresented that PLAINTIFF'S use of the images  
20 was an infringing activity and was in violation of DEFENDANT'S alleged copyright.  
21 Specifically, DEFENDANT entered into a License Agreement that allowed PLAINTIFF to use  
22 the disputed images on DOBERMANRESQ.COM. DEFENDANT was aware of this license  
23 agreement at all times.

24           54. DEFENDANT'S director, Angie Gilbert, gave PLAINTIFF a license to use the  
25 the images that are the subject of the DMCA Takedown Notices. DEFENDANT'S members  
26 were aware of this agreement at all relevant times and never objected to it until DEFENDANT  
27 wrongfully and fraudulently issued several DMCA Takedown Notices to PLAINTIFF.

28       ///

1           55.     At the time DEFENDANT issued the DMCA Takedown Notices, DEFENDANT  
 2 knew that the images posted on DOBERMANRESQ.COM were not infringing due to the fact  
 3 DEFENDANT willfully and knowingly entered into a License Agreement with PLAINTIFF to  
 4 use the images. Despite this, DEFENDANT intentionally and wrongfully issued multiple  
 5 DMCA Takedown Notices to PLAINTIFF.

6           56.     DEFENDANT'S wrongful and fraudulent use of DMCA Takedown Notices forced  
 7 the disputed pictures, which are the subject of a valid License Agreement, to be removed from  
 8 DOBERMANRESQ.COM. As a further result of DEFENDANT'S wrongful actions,  
 9 PLAINTIFF still cannot use any of the images.

10          57.     As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFF has  
 11 been required to incur and will continue to incur attorneys' fees, costs and other related  
 12 expenses, all of which shall be established in an amount according to proof at the time of trial.

13          58.     By reason of DEFENDANT'S conduct, PLAINTIFF has been deprived of the use  
 14 of the images, could not run DOBERMANRESQ.COM properly, lost donations, and lost the  
 15 ability to help recuse Dobermans, a value of which exceeds \$25,000.00 the exact amount to be  
 16 determined at the time of trial.

### 17                               **PRAYER FOR RELIEF**

18           **WHEREFORE**, PLAINTIFF prays as follows:

#### 19           **FIRST CAUSE OF ACTION (Copyright Infringement)**

20           1.     For general and special damages in excess of \$25,000.00, the exact amount to be  
 21 proven at trial;

22           2.     For declaratory and injunctive relief, including preliminary and permanent  
 23 injunctions, against DEFENDANT, to stop it from continuing to prevent PLAINTIFF from using  
 24 his images;

25           3.     For reasonable attorneys' fees and costs;

26           4.     For damages;

27           5.     For costs of suit herein incurred; and

28           6.     For such other and further relief as the court may deem proper.



1 **SECOND CAUSE OF ACTION (Breach of Covenant of Good Faith and Fair Dealing)**

- 2 1. For damages in excess of \$25,000.00, the exact amount to be proven at trial;
- 3 2. For preliminary and permanent injunctions requiring DEFENDANT to comply
- 4 with the terms of the License Agreement;
- 5 3. For an order directing that DEFENDANT comply with all other provisions of the
- 6 License Agreement;
- 7 4. For the cost of suit herein;
- 8 5. For reasonable attorneys' fees; and
- 9 6. For such other and further relief as this Court deems just and proper.

10 **THIRD CAUSE OF ACTION (Misrepresentation under 17 U.S.C. 512(f))**

- 11 1. For general and special damages in excess of \$25,000.00, the exact amount to be
- 12 proven at trial;
- 13 2. For declaratory and injunctive relief, including preliminary and permanent
- 14 injunctions, against DEFENDANT, to stop it from continuing to prevent PLAINTIFF from using
- 15 his images;
- 16 3. For reasonable attorneys' fees and costs;
- 17 4. For costs of suit herein incurred; and
- 18 5. For such other and further relief as the court may deem proper.

19 /s/ Patrick J. Kane

20 Dated: July 9, 2012

By:

Patrick J. Kane, Attorneys for Plaintiff, and  
Counter-Defendant JAMES A. FRY, an  
individual, d/b/a FOX NETWORK  
SYSTEMS, DOBERMANRESQ.COM and  
DOBERMANRESQ INC.

28 K:\CLIENTS\Fry\Pleadings\FAC.wpd

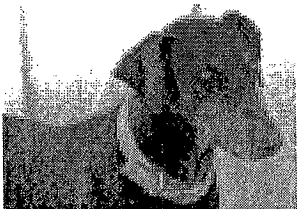
EXHIBIT "A"



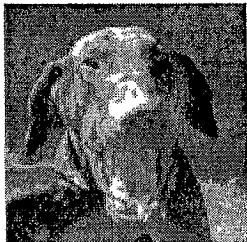
## RESCUE REPORT

You can join us in saving Dobermans by sponsoring a specific Doberman, sponsoring multiple Dobermans or making a contribution of any size. You can also purchase DobermanResQ gifts for yourself, your family, friends and even your best friends. Each purchase helps support DobermanResQ. Together we're "Making a Difference, One Doberman At A Time". Thank you for your interest in our rescues and for your support. Be sure to visit our CafePress store for a range of DobermanResQ products including mugs, shirts, bumper stickers and refrigerator magnets at: [cafepress.com/dobermanresq](http://cafepress.com/dobermanresq)

For more information and video's on these sweethearts check them out at [www.Dobermanresq.com](http://www.Dobermanresq.com). PLEASE take a look and see if you can foster any of these guys.



Maya A two year old black and tan spayed female with natural ears and docked tail. Maya is a very happy Doberman who has been living with her 3 year brother Doberman Razor. They get along with older kids. The family has moved and cannot keep Razor and Maya and would prefer the two are adopted together.



Razor is a three year old black and tan neutered male with natural ears and docked tail. Razor is a very happy Doberman who has been living with his 2 year sister Doberman Maya. They get along with older kids. The family has moved and cannot keep Razor and Maya and would prefer the two are adopted together.



Rocco is a three year old black and rust neutered male with natural ears and docked tail. Was saved from euthanasia by a military family in Oceanside. He's a wonderful Dobe who has integrated well with 2 other dogs and a 3 year old who's become his best friend. Family cannot keep 3 dogs and needs to find him a wonderful home. He's a very happy energetic boy.



Quest is a 2 year old black & rust male with natural ears and a docked tail. He's from a shelter and very nice. Gets along great with other dogs. A real joy.

EXHIBIT "B"

Attachment 1  
Uploader Form and Copyright Agreement  
For rescue photos

DobermanResQ Uploader	
Allowed Types: *.jpg, *.gif, *.png, *.avi, *.zip, *.txt, *.doc Max size per file: 36384kb. Max size for all files combined: 65536kb.	
Select File:	<input type="text"/> <input type="button" value="Browse.."/>
Select File:	<input type="text"/> <input type="button" value="Browse.."/>
Select File:	<input type="text"/> <input type="button" value="Browse.."/>
Select File:	<input type="text"/> <input type="button" value="Browse.."/>
Comments:	<input type="text"/>
<input type="button" value="Upload File(s)"/> <input type="button" value="Reset Form"/>	
* - By uploading photos, videos or files you certify you are the copyright holders of these files and grant non-exclusive rights to use any or all photos, videos or files in perpetuity to DobermanResQ.com, its agents, successors and licensees.	

**CLICK HERE TO PLAY A SHORT HELP VIDEO**

©DobermanResQ.com

EXHIBIT "C"

[#QBN-205301]: Cannot access any of my sites, get a s...

**Subject:** [#QBN-205301]: Cannot access any of my sites, get a suspended notice  
**From:** "WebHostingPad Admin" <admin@webhostingpad.com>  
**Date:** 7/15/2011 4:43 PM  
**To:** jim@4jas.com  
**CC:** aztecdpc@yahoo.com

Hello,

Full complaint detail:

-----  
 Sender Information

Aztec Doberman Pinscher Club of San Diego (ADPC)  
 Attn: Pam Scholefield, Esq.

Officer and General Counsel for ADPC  
 c/o Scholefield, P.C.  
 501 W. Broadway, #1770

San Diego, CA 92101

Email: [pam@construction-laws.com](mailto:pam@construction-laws.com)

(619)544-0086

Fax (619) 544-0045

To Whom It May Concern:

This notice is to notify you that there is web content that infringes on our copyrights per the Digital Millennium Copyright Act, on a website that you are providing hosting services for. We appreciate your enforcement of copyright law and support of our rights in this matter.

Please do the following:

- 1) Reply to the Complainant (Us) that this notification has been received, within 24 hours.
- 2) Send your customer written notification, along with a copy of this notification, requesting removal of the infringing material and requiring confirmation of the removal be sent to you (the Provider) within 24 hours;
- 3) Disable access to the infringing material or the customer's account if the customer fails to remove the infringing material and/or fails to inform you (the Provider) of the removal within 24 hours of notification;

NOTICE: There is currently copyright infringement litigation in the Ninth Federal District Court, Southern District (CASE NO: 11CV1329 BTM POR) over the Copyrighted Material being claimed under this DMCA take-down notice. Upon this notification, the infringing materials shall not be replaced or made available until the completion of any lawsuit or under court order. See attached copy of lawsuit with this email.

Identification of Copyrighted Work

The copyrighted materials at issue are images of dogs and graphics that are composed of images of dogs that appear on [www.dobermanresq.com](http://www.dobermanresq.com) and its related pages as of 7/1/2011. A representative list of pages containing infringing material are identified as follows:

<http://www.dobermanresq.com/>

<http://www.dobermanresq.com/rescue/>

<http://www.dobermanresq.com/rescue/socal/>

<http://www.dobermanresq.com/rescue/nocal/>

<http://www.dobermanresq.com/rescue/local/sponsoring.php>

<http://www.dobermanresq.com/volunteer.php>

<http://www.dobermanresq.com/news/>

<http://www.dobermanresq.com/shopping/>



<http://www.dobermanresq.com/rescue/loca%7c/>

<http://www.dobermanresq.com/rescue/loca%7c/sponsorpg.php>

The copyrighted materials at issue are images that appear on [www.dobermanresq.com](http://www.dobermanresq.com) page listed below as of 7/2/2011.

<http://www.dobermanresq.com/rescue/gallery/>

Submitted with this notice are specimens of the infringing copyrighted images related to the website pages listed above.

These are blatant and obvious examples and are not necessarily a complete list of all alleged violations. We require that all infringing images be removed from the website in question and the onus is on the infringer to locate and remove all copyright violations of ADPC's intellectual property.

#### Copyright Owners Statement

I am an officer and general counsel for Aztec Doberman Pinscher Club of San Diego. I have a good faith belief that use of the Copyrighted Materials described above on the infringing web pages are not authorized by the copyright owner, Aztec Doberman Pinscher Club of San Diego.

I swear, under penalty of perjury, that the information in the notification is accurate and that I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Signed on this day, the 2nd day of July, 2011,

/s/ Pamela J. Scholefield

attachments to this email notification: copy of U.S. District Court CASE NO: 11CV1329 BTM POR.

<http://www.dobermanresq.com/>

<http://www.dobermanresq.com/rescue/>

<http://www.dobermanresq.com/rescue/socal/>

<http://www.dobermanresq.com/rescue/nocal/>

<http://www.dobermanresq.com/rescue/>

<http://www.dobermanresq.com/rescue/local/sponsoring.php>

<http://www.dobermanresq.com/volunteer.php>

<http://www.dobermanresq.com/rescue/loca%7c/sponsorpg.php>

<http://www.dobermanresq.com/news/>

<http://www.dobermanresq.com/shopping/>

<http://www.dobermanresq.com/rescue/loca%7c/>

<http://www.dobermanresq.com/rescue/gallery/>

Thanks,

Amal  
Webhostingpad.com

#### Ticket Details

=====

Ticket ID: QBN-205301

Department: Admin

Priority: default

Status: On Hold

## DMCA Complaint

## Digital Millennium Copyright Act

7/23/2011

### Recipient Information

HostDime.com  
DA: Abuse Division Manager  
Attn: Legal Reports  
189 S. Orange Ave  
Suite 1500S  
Orlando, FL 32801  
**Email:** abuse@dimenoc.com  
• (888) 402-3463

### Sender Information

**Aztec Doberman Pinscher Club of San Diego  
(ADPC)**  
Attn: Pam Scholefield, Esq.  
Officer and General Counsel for ADPC  
c/o Scholefield, P.C.  
501 W. Broadway, #1770  
San Diego, CA 92101  
**Email:** pam@construction-laws.com  
(619)544-0086  
Fax (619) 544-0045

**Sent via:** Email & USPS

To Whom It May Concern:

This notice is to notify you that there is web content that infringes on our copyrights per the Digital Millennium Copyright Act, on a website that you are providing hosting services for. We appreciate your enforcement of copyright law and support of our rights in this matter. With this document, electronic or otherwise, you have actual knowledge of infringing activity. Choosing to ignore this DMCA request, even if you do not receive a USPS mailed copy, does not relieve you of your obligation to stop infringing activity, otherwise any safe-haven protection anticipated by the DMCA will not apply. If you have any questions, contact your legal counsel.

The website owner has made intentional efforts to disguise the different pages from our view, than what the public sees. When the website is viewed on computers with our IP address, the pages that are displayed are not the same as the pages viewed from any other computer. This is an intentional attempt to deceive the accuser (ADPC), and to continue to engage in infringing activity. This circumvents the intent of the DMCA. You have actual knowledge of this deception, and have the obligation to assure that it does not continue.

### **Please do the following:**

- 1) Reply to the Complainant (ADPC) that this notification has been received, within 24 hours.
- 3) Disable access to the infringing material or the customer's account until the customer removes the infringing material;

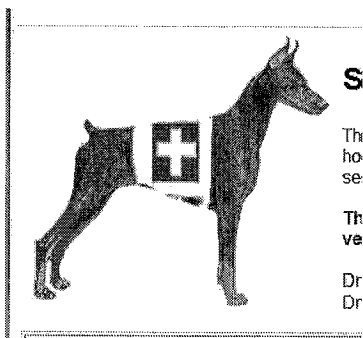
**NOTICE: There is currently copyright infringement litigation in the Ninth Federal District Court, Southern District (CASE NO: 11CV1329 BTM POR) over the Copyrighted Material being claimed under this DMCA take-down notice. Upon this notification, the infringing materials shall not be replaced or made available until the completion of any lawsuit or under court order. See attached copy of lawsuit with this notice.**

### **Identification of Copyrighted Work**

The copyrighted materials at issue are images of dogs and graphics that are composed of images of dogs that appear on [www.dobermanresq.com](http://www.dobermanresq.com). Some of the infringing material is as follows:

## DMCA Complaint

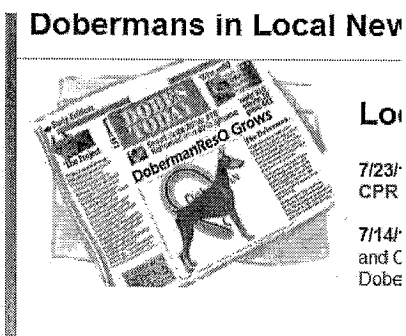
## Digital Millennium Copyright Act



<http://dobermanresq.com/health/cpr.php> Image of dog



<http://www.dobermanresq.com/news/> Image of dog on newspaper



<http://www.dobermanresq.com/news/local.php> Image of dog on newspaper

NOTE: The page <http://www.dobermanresq.com/rescue/gallery/> has previously been identified as containing infringing material with a previous DMCA takedown request at another hosting service. The website owner has blocked access to this page by creating a "restricted" access gateway and admitting that this page has been moved. **This does not change the fact that displaying images to anyone, whether restricted access or not, is still considered infringing activity.** It is absolutely necessary to know if any of the images contained in the "members only" gallery page are also being displayed. Otherwise, the assumption is that the website owner is engaging in infringing activity. See below for the images at issue.



## DMCA Complaint

## Digital Millennium Copyright Act

### ■ Touching Tails. Stories of Love and Adoption...

Our gallery has moved to the **Members Only** section of the website. Our members can follow the stories from rescue to adoption there from now on. Thank you for being a part of our ResQ family.



<http://www.dobermanresq.com/rescue/gallery/>

These are examples and are not necessarily a complete list of all alleged violations. We require that all infringing images be removed from the website in question and the onus is on the infringer to locate and remove all copyright violations of ADPC's intellectual property.

///

///

#### Copyright Owners Statement

I am an officer and general counsel for Aztec Doberman Pinscher Club of San Diego. I have a good faith belief that the use of the Copyrighted Materials described above on the infringing web pages are not authorized by the copyright owner, Aztec Doberman Pinscher Club of San Diego.

I swear, under penalty of perjury, that the information in the notification is accurate and that I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Signed on this day, the 23rd day of July, 2011,

## DMCA Complaint

Digital Millennium Copyright Act

---

Pamela J. Scholefield

*/s/ Pamela J. Scholefield*

*attachments to this notification: copy of U.S. District Court* CASE NO: 11CV1329 BTM POR

**Subject:** [HB SUPPORT #WKI-710341]: DMCA Complaint  
**From:** "HostBig Support" <support@hostbig.com>  
**Date:** 9/9/2011 8:46 PM  
**To:** dobermanresq@gmail.com

Hello Jim fry,

We have recived DMCA complaint from our upstream provider as bellow.

-----  
First time complaint: 25 July 2011 17:34:45

The attached file contains a DMCA Notice of Infringing Content regarding [dobermanresq.com], currently hosted on this server.

The body of the notice contains two specific URLs containing infringing content:

=====  
<http://dobermanresq.com/images/health/cpr.jpg>  
<http://dobermanresq.com/images/news/paper.jpg>  
=====

The body of the notice also states that infringing content can be found at the following location:

=====  
<http://dobermanresq.com/members/>  
=====

Please ensure all infringing content is taken offline.

Ariel P.  
Server Security Analyst  
HostDime.com, Inc.  
Hosting.Servers.Solutions  
1.888.402.DIME (3463)  
USA: 407.756.1126

Second time complaint: 10th Sep 2011, 8:58 AM

We are reopening this ticket due to the issue not having been resolved.

There is pending litigation against [dobermanresq.com].  
The plaintiff has threatened to include HostDime as an infringer in their suit if the site is not quickly disabled.

The site must be suspended within the next 6 hours in order to prevent suspension of the server and/or null-routing of the domain's IP address.

Please suspend the account.

Ariel P.  
Server Security Analyst  
HostDime.com, Inc.  
Hosting.Servers.Solutions  
1.888.402.DIME (3463)  
USA: 407.756.1126

-----  
Currently we have suspended this account due to above complaint.  
Please have a look at attachment of DMCA complaint file inorder to activet the account.

Please submit a DMCA counter notification for your issue. We will review your issue and decide next course of action. Please refer this link to submit counter notification :  
<http://www.google.com/dmca.html>

Please file a DMCA Counter-Claim with us by following the instructions on the second page of the document available at [ [http://www.hostdime.com/support/forms/copyright\\_claim\\_form.pdf](http://www.hostdime.com/support/forms/copyright_claim_form.pdf) ].

Regards

David

HostBig Support Center

Email: [support@hostbig.com](mailto:support@hostbig.com)

--Attachments:-----

DMCA takedown 2 hostdime.docx

1.3 MB

EXHIBIT "B"

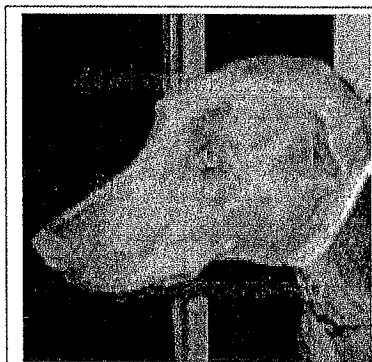
### **Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

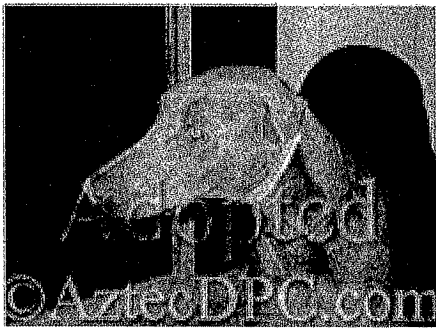
---

The images featured below are a sample of the photos that have been provided by Fry as initial disclosure documents.

1. All Fry's initial disclosure documents have the copyright ownership watermark of DobermanresQ. It is not clear whether it is DobermanresQ.com, or Dobermanresq Inc., a separate business entity.
2. Fox Network Systems filed the original lawsuit over use of copyrighted images.
3. Fry has not produced any evidence of any copyrights owned by Fox Network Systems.
4. The matching images have been taken directly from the archives of the Aztec website.
5. The images from the Aztec archives were originally watermarked by Fry, when he was a volunteer webmaster.
6. The number of matching images with both watermarks could be in the hundreds.



resq (630).jpg





**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (1466).jpg



resq (539).jpg



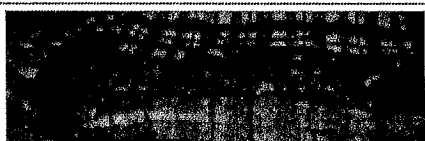
**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (406).jpg



resq (346).jpg

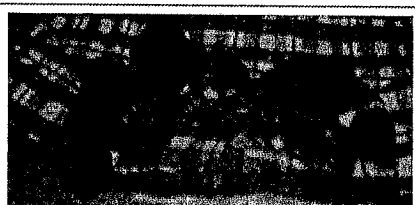


5p1

**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (383).jpg



6p1



resq (348).jpg



r1



**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



2b

resq (347).jpg



resq (385).jpg

**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (378).jpg

**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (372).jpg

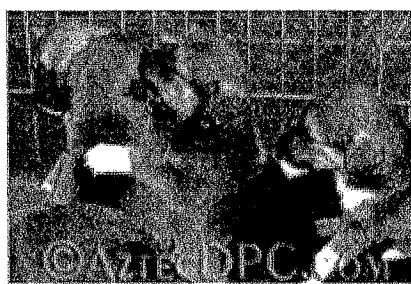
**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (428).jpg



resq (389).jpg



**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---

The images identified below were created and provided by Bryan Weaver or Pamela J. Scholefield specifically for the purposes of promoting dogs in Aztec's rescue program. The watermark on each image falsely identifies the copyright owner. These images were created by volunteer members working within the scope of the ADPC rescue program, specifically for, and only for the Aztec Doberman rescue program. No rights, licenses or ownership of these images has been granted to anyone other than ADPC.



resq (1180).jpg



resq (1179).jpg

**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



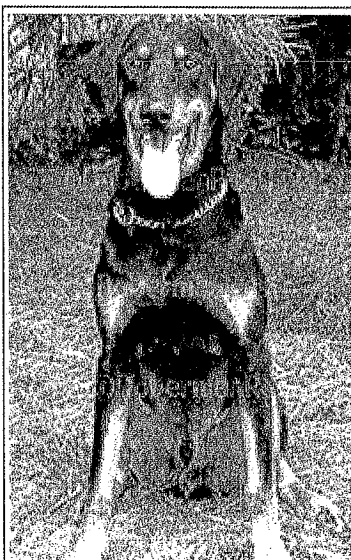
resq (1176).jpg



resq (1177).jpg



resq (1175).jpg



resq (656).jpg



resq (657).jpg

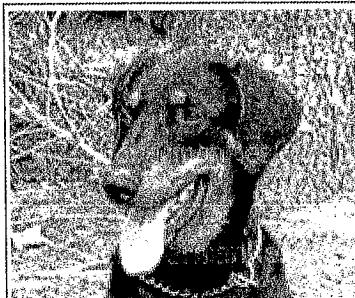
**Mandatory Settlement Conference - Exhibit Handout**

The images in this exhibit are from Fry's initial disclosure documents and from previously watermarked and published images in Aztec's archives.

---



resq (658).jpg



resq (659).jpg



resq (660).jpg